

**Final Order Denying Refund: 01-20200387  
Individual Income Tax  
For the Tax Year 2019**

**NOTICE:** IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

**HOLDING**

Individual failed to provide sufficient documentation to prove that she engaged in for-profit activities resulting in a loss and therefore did not qualify for the claimed deduction.

**ISSUE**

**I. Individual Income Tax - Loss deduction.**

**Authority:** IC § 6-3-1-3.5; IC § 6-8.1-5-1; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); IRC § 62; IRC § 183; Treas. Reg. § 1.183-2.

Taxpayer protests the Department's denial of her claim for refund.

**STATEMENT OF FACTS**

Taxpayer claims that her business, a pass-through entity, operated at a loss and that she is thus entitled to a refund on individual income tax paid. After review of Taxpayer's return, the Indiana Department of Revenue ("Department") did not agree and adjusted Taxpayer's return to remove the claimed deductions. This resulted in a denial of the claim for refund on Taxpayer's return. Taxpayer filed a protest and waived her right to an administrative hearing. This written ruling results. Additional facts will be provided as necessary.

**I. Individual Income Tax - Loss deduction.**

**DISCUSSION**

Taxpayer protests the Department's denial of her claim for refund of Indiana individual income tax for 2019. Taxpayer believes that, since her business operated at a loss and since the business was a pass-through entity, that she was entitled to certain income tax deductions on her individual income tax return. In support of her position, Taxpayer submitted her 2019 Federal 1040 Return and an Excel Spreadsheet. The Excel Spreadsheet is titled "2019 Annual Profit and Loss Statement" and appears to have been created by Taxpayer.

"[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

When a taxpayer determines he or she has overpaid a tax, the taxpayer must file a GA-110L form as prescribed by the Department in order to claim a refund. IC § 6-8.1-9-1(a). The claim must "set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund." *Id.* Consequently, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2011).

IC § 6-3-1-3.5(a) defines adjusted gross income under IRC § 62 as the starting place for calculating an individual's Indiana adjusted gross income. IRC § 62 states that for individuals, the term "adjusted gross income" means gross income minus various deductions, including a deduction for losses incurred by a for-profit business.

IRC § 183 explains the requirements for this deduction and provides in part:

- (a) General rule.--*In the case of an activity engaged in by an individual or an S corporation, if such activity is not engaged in for profit, no deduction attributable to such activity shall be allowed under this chapter except as provided in this section.*
- (b) Deductions allowable.--*In the case of an activity not engaged in for profit to which subsection (a) applies, there shall be allowed--*
- (1) the deductions which would be allowable under this chapter for the taxable year without regard to whether or not such activity is engaged in for profit, and
  - (2) a deduction equal to the amount of the deductions which would be allowable under this chapter for the taxable year only if such activity were engaged in for profit, but only to the extent that the gross income derived from such activity for the taxable year exceeds the deductions allowable by reason of paragraph (1).
- (c) Activity not engaged in for profit defined.--*For purposes of this section, the term "activity not engaged in for profit" means any activity other than one with respect to which deductions are allowable for the taxable year under section 162 or under paragraph (1) or (2) of section 212.*
- (d) Presumption.--*If the gross income derived from an activity for 3 or more of the taxable years in the period of 5 consecutive taxable years which ends with the taxable year exceeds the deductions attributable to such activity (determined without regard to whether or not such activity is engaged in for profit), then, unless the Secretary establishes to the contrary, such activity shall be presumed for purposes of this chapter for such taxable year to be an activity engaged in for profit.* In the case of an activity which consists in major part of the breeding, training, showing, or racing of horses, the preceding sentence shall be applied by substituting "2" for "3" and "7" for "5".
- (e) Special rule.--
- (1) In general.--A determination as to whether the presumption provided by subsection (d) applies with respect to any activity shall, if the taxpayer so elects, not be made before the close of the fourth taxable year (sixth taxable year, in the case of an activity described in the last sentence of such subsection) following the taxable year in which the taxpayer first engages in the activity.
  - (2) Initial period.--If the taxpayer makes an election under paragraph (1), the presumption provided by subsection (d) shall apply to each taxable year in the 5-taxable year (or 7-taxable year) period beginning with the taxable year in which the taxpayer first engages in the activity, if the gross income derived from the activity for 3 (or 2 if applicable) or more of the taxable years in such period exceeds the deductions attributable to the activity (determined without regard to whether or not the activity is engaged in for profit).
  - (3) Election.--An election under paragraph (1) shall be made at such time and manner, and subject to such terms and conditions, as the Secretary may prescribe.
  - (4) Time for assessing deficiency attributable to activity.--If a taxpayer makes an election under paragraph (1) with respect to an activity, the statutory period for the assessment of any deficiency attributable to such activity shall not expire before the expiration of 2 years after the date prescribed by law (determined without extensions) for filing the return of tax under chapter 1 for the last taxable year in the period of 5 taxable years (or 7 taxable years) to which the election relates. Such deficiency may be assessed notwithstanding the provisions of any law or rule of law which would otherwise prevent such an assessment.
- (Emphasis Added).*

Taxpayer failed to file either her individual Indiana returns for tax years 2013-2018 and did not provide evidence of business activities for those years. Thus, the Department will not presume that Taxpayer's activities in 2019 were engaged in for profit. The Annual Profit and Loss Statement provided with the protest is, on its own, insufficient to demonstrate that the Taxpayer's activities were engaged in for profit. See Treas. Reg. § 1.183-2(b) (listing the nine factors used to determine if a Taxpayer engages in an activity to make a profit.) Without a favorable presumption or sufficient documentation supporting her claim, Taxpayer failed to demonstrate that she qualifies for the claimed deduction, as required by IC § 6-8.1-5-1(c).

## FINDING

Taxpayer's protest is denied.

June 25, 2021

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